

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ANTONIO HOLMES,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:23-CV-01129 PLC
)	
STATE OF MISSOURI, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court following Plaintiff Antonio Holmes’ filing of a “Petition for a Preliminary Injunction and a Temporary Restraining Order.” ECF No. 1. Plaintiff alleges he is being illegally detained by the Sainte Genevieve County Jail based on the Missouri Second Amendment Preservation Act, Mo. Rev. Stat. § 1.410-1.485.¹ *Id.* at 1-2.

As a preliminary matter, it is unclear whether Plaintiff intended to file the instant action in the United States District Court for the Eastern District of Missouri. The caption of the filing reflects “Civil Division” of “The Circuit Court(s) of St. Louis City.” *See* ECF No. 1. Likewise, the envelope is directed to the “Circuit Court Clerk.” *See* ECF No. 1-2. If Plaintiff intends to file this matter with the Circuit Court of the City of St. Louis, he must: (1) file a written notice of voluntary dismissal with this Court, *and* (2) file his petition in the Circuit Court of the City of St. Louis by mailing it to the Clerk of the Circuit Court for filing.

If Plaintiff intends to file an action in the United States District Court for the Eastern

¹ The Court notes that in March 2023, the United States District Court for the Western District of Missouri found the Missouri Second Amendment Preservation Act to be unconstitutional. *United States v. Missouri*, No. 2:22-CV-04022-BCW, 2023 WL 2390677 (W.D. Mo. Mar. 7, 2023). That decision is currently on appeal with the Eighth Circuit Court of Appeals. *United States v. Missouri*, No. 23-1457 (8th Cir. filed Mar. 10, 2023).

District of Missouri, his “Petition” fails to commence a civil case because it is not drafted on a Court-provided form. *See* E.D. Mo. L.R. 2.06(A) (“All actions brought by self-represented plaintiffs or petitioners should be filed on Court-provided forms[.]”). The Clerk of Court will be directed to send Plaintiff a blank form so that he may file an amended pleading in this action. Because it is unclear whether Plaintiff intends to file an action under 42 U.S.C. § 1983 or a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, the Clerk shall be directed to mail both forms to Plaintiff.

Furthermore, Plaintiff has neither paid the filing fee nor submitted an application to proceed without prepaying fees or costs. *See* 28 U.S.C. § 1915(a)(1); E.D. Mo. L.R. 2.01(B)(1). Plaintiff must do one or the other in order for this case to proceed in this federal District Court. The filing fee amount depends on whether Plaintiff intends for this to be a § 1983 action or a habeas action under § 2241. The Court filing fee for a § 1983 action is \$402.00, and for a § 2241 action is \$5.00.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court is directed to mail Plaintiff a copy of the Court’s “Prisoner Civil Rights Complaint” form and the Court’s “Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241” form.

IT IS FURTHER ORDERED that Plaintiff shall file an amended pleading on one of the Court-provided forms within **thirty (30) days** of the date of this Order. Plaintiff is advised that his amended pleading will take the place of his original filing and will be the only pleading that this Court reviews. The filing *must* include the case number of this cause, 4:23-CV-01129 PLC.

IT IS FURTHER ORDERED that the Clerk of Court is directed to mail Plaintiff a copy of the Court’s “Application to Proceed in District Court without Prepaying Fees or Costs” form.

IT IS FURTHER ORDERED that Plaintiff must either pay the full filing fee or submit an application to proceed without prepaying fees or costs within **thirty (30) days** of the date of this Order. The Court filing fee for a § 1983 action is \$402.00, and for a § 2241 action is \$5.00.

IT IS FURTHER ORDERED that, if Plaintiff chooses to submit an application to proceed without prepaying fees or costs, he shall file a certified copy of his prison account statement for the six-month period immediately preceding the filing of the complaint, within **thirty (30) days** of the date of this Order.

IT IS FINALLY ORDERED that if Plaintiff fails to comply with this Order, the Court will dismiss this action without prejudice and without further notice.



PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 28th day of September, 2023.